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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/499,871

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John Ellis

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1846

7590

07/27/2005

Blakely Sokoloff Taylor & Zafman LLP
12400 Wilshire Boulevard
7th floor
Los Angeles, CA 90025

EXAMINER

JUNG, MIN

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/499,871

Applicant(s)

ELLIS ET AL.

Examiner

Min Jung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Rochberger et al., US 6,272,107 (Rochberger).

Rochberger discloses a method of path restoration in an ATM network utilizing point to point switched virtual circuits.

Specifically regarding the present claims, Rochberger teaches a loop-back path to provide connectivity between a first and second nodes (col. 14, lines 22-24, and 34-40, and col. 14, line 56 – col. 15, line 1), the first node having a primary connection and a secondary connection, the primary connection carrying the user connections during a

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normal mode, the secondary connection not using network bandwidth during normal mode (col. 14, lines 10-14 and lines 39-45, and col. 15, lines 58-65, and col. 4, lines 65-67); and switching element coupled to the loop-back path and the first node to switch the connectivity from the primary connection to the secondary connection when there is a failure condition at the primary connection (Fig. 17, and col. 16, lines 18-36).

Rochberger further teaches the loop-back path being one of a physical connection (path) and a logical connection (SVC, col. 14, lines 10-14), and failure condition being detected by a network monitor (col. 16, lines 19-21, and lines 45-55).

Rochberger further teaches a re-route handler coupled to switching element to control the switching element based on a connectivity status between the first and the second node, the connectivity status indicating the failure condition at the primary connection between the first and second nodes (col. 16, lines 18-23, and lines 45-55, the transit node and/or the source node function to control the switching operation based on the detected failure condition). Note that the connection status, normal or break, is detected by hardware and/or software at the node, and the switching is performed based on the connection status. See col. 16, lines 18-23, and lines 45-55.

Rochberger further teaches that the secondary connection does not carry user connections during the normal mode. See col. 4, lines 65-67.

Rochberger further teaches that the network switch is an ATM switch (col. 4, lines 50-55), the connections are VPC in ATM switch (col. 4, lines 56-64), and the network monitor is OAM monitor (col. 12, lines 64-66).

Further, it is inherent in Rochberger that the primary and secondary connections have equal connection capacity, because it is not taught otherwise. If Rochberger intended providing different connection capacity for the two connections, it would have been addressed specifically. Since there is not mention of unequal capacity in primary connection and secondary connection, the same capacity is taught by inherency.

Response to Arguments

3. Applicant's arguments with respect to claims 1-50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Pazy et al. patent, and the Nagata et al. patent, are cited for further references.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 571-272-3127.

The examiner can normally be reached on Monday, Thursday, Friday 7:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ
July 25, 2005



Min Jung
Primary Examiner